

SOUTHERN ENVIRONMENTAL LAW CENTER

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
ATLANTA, GA 30303-1800

Telephone 404-521-9900
Facsimile 404-521-9909
selcga@selcga.org

RCVD EPA REGION 4

2010 MAR - 5 P 3:25
Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

March 4, 2010

FREEDOM OF
INFORMATION OFFICE

Via Facsimile (404) 562-8054
U.S. Mail and Email

U.S.-Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Building
61 Forsyth Street S.W., 9th Floor
Atlanta, GA 30303-8960

CONTROL NO. *C.A.D.I.K.* 00343-10
DATE: 4/2/10
OFFER
SEARCHED ☒ INDEXED ☒
SERIALIZED ☒ FILED ☒
MAR 10 2010
FBI - ATLANTA
OTHER

fee waiver requested

Re: **Freedom of Information Act Request – Rosa Coal Mine, ADEM**
NPDES Permit Number AL0080080

Dear FOIA Officer:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests all documents in the possession or control of the Environmental Protection Agency ("EPA") that relate to the NPDES permit for Mcoal Corporation's Rosa Coal Mine in Blount County, Alabama. The NPDES permit number is AL0080080. This proposed project has discharges into the Locust Fork of the Black Warrior River. The requested documents include, but are not limited to the following:

- Any documents relating to the NPDES permit, permit application, and issuing of the permit;
- All correspondence relating to the NPDES permit and Rosa Coal Mine, including any communication between the EPA, the Alabama Department of Environmental Management ("ADEM"), Mcoal Corporation, any involved representatives or consultants, and any other agency, company, or person relating to the project; and
- Any documents related to all testing and water quality determinations made regarding the Locust Fork of the Black Warrior River, its tributaries, and any other connected waters.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas,

directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the United States Environmental Protection Agency.

FOIA directs a responding agency to make a "determination" on any request within twenty (20) working days of receipt. See 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. See 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of waivers. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987); Pederson v. Resolution Trust Corp., 847 F. Supp. 851, 855 (D.Colo.1994); Etlinger v. FBI, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the "roadblocks and technicalities which have been used by various Federal agencies to deny waivers...." Pederson, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over 20 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. For example, SELC frequently publishes reports and issues press releases regarding its projects (See e.g., "Where are We Growing: Land Use and Transportation in the Greater Richmond Area,"

http://www.southernenvironment.org/cases/vdot_reform/richmond_report.pdf). Lawyers at SELC are interviewed by the media to explain their work and its significance. (See e.g., "Judge Halts Landing Field," Raleigh News and Observer, February 19, 2005, <http://www.newsobserver.com/news/growth/story/2140513p-8522056c.html>). SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. (See e.g., "Smart Mobility Report: Review of Tri-County Parkway Location Study,"

http://www.southernenvironment.org/newsroom/publications/smart_mobility_tri_county.pdf). SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites. (See "Mercury facts in Virginia,"

http://www.southernenvironment.org/cases/mercury_va/mercury_facts.htm).

All of this information is available for free to any interested member of the public. SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast. A fee waiver clearly will benefit the general public through increased notice and understanding of the

operations of the government. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

Should SELC's request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$25. SELC reserves its right to appeal a fee waiver or reduction denial.

Thank you for your assistance in this matter. Should you have any questions, please feel free to contact me at 404-521-9900, or via email at cwannamaker@selcga.org. My facsimile number is 404-521-9909.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine M. Wannamaker", with a long horizontal flourish extending to the right.

Catherine M. Wannamaker
Staff Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
WASHINGTON, DC 20460

March 12, 2010

Ms. Catherine Wannamaker
Southern Environmental Law Center
127 Peachtree Street, Suite 605
Atlanta, GA , 30303-1800
United States

RE: Request No. 04-FOI-00343-10

Dear Ms. Wannamaker:

This is in response to your Freedom of Information Act (FOIA) request, 5 U.S.C. 552 seeking records related to NPDES permit for Mcoal Corporation's Rosa Coal Mine in Blount County, Alabama and for a waiver of fees in connection with that request.

The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. 552(a)(4)(A)(iii)(1994 & Supp. IV 1998).

Requests for fee waivers must be considered **on a case-by-case basis** and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies must consider six factors in sequence. **We are asking that you please only address the three factors summarized below.**

2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

Should you wish to receive a fee waiver, you must address, in sufficient detail, these three factors. You may send your response by email to hq.foia@epa.gov, or by facsimile to this office (202) 566-2147. If we do not hear from you within 7 days from the date of this letter, we will deny your request for a waiver of fees based on insufficient justification. Records will be sent if you have provided assurance of payment should fees exceed \$25.00.

If you have any questions, please contact the Requester Service Center at hq.foia@epa.gov, or call 202-566-1667.

Sincerely,

Larry F. Gottesman
National FOIA Officer

Request No. 04-FOI-00343-10: Response to Fee Waiver Justification
Gabrielle Dean

to:

FOIA HQ

03/15/2010 01:29 PM

Cc:

Catherine Wannamaker

Show Details

Dear Mr. Gottesman:

Please see the attached letter responding to your March 12th request for fee waiver justification. This letter has also been provided by facsimile.

Sincerely,

Gabrielle Dean

*Gabrielle N. K. Dean, Legal Assistant
Southern Environmental Law Center
Georgia/Alabama Office
The Candler Building
127 Peachtree St. Suite 605
Atlanta, GA 30303-1840
Phone: (404) 521-9900
Fax: (404) 521-9909
<http://www.SouthernEnvironment.org>*

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selcga@selcga.org

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

March 15, 2010

MAR 16 2010

Via Facsimile: (202) 566-2147

Larry F. Gottesman
National FOIA Officer
United States EPA
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460

Re: Request No. 04-FOI-00343-10

Dear Mr. Gottesman:

This letter is in response to your letter of March 12, 2010, requesting additional information to justify a fee waiver in connection with the Southern Environmental Law Center (SELC) request for materials related to the NPDES permit for Mcoal Corporation's Rosa Coal Mine in Blount County, Alabama. You asked that we provide additional information on three of the six factors that EPA considers in determining whether to grant a fee waiver. Please see the explanation below of how SELC's request satisfies factors two, three, and four.

- A. The requested materials are "likely to contribute" to an understanding of specific government operations or activities because the releasable material is meaningfully informative in relation to the subject matter of the request.

Here, SELC has requested all EPA documents related to Mcoal Corporation's Rosa Coal Mine in Blount County, Alabama. The requested material relates to SELC's ongoing work regarding water quality in Alabama, and EPA's oversight of the Alabama Department of Environmental Management's ("ADEM") permitting activities under the Clean Water Act. Any EPA documents regarding the NPDES permit for Mcoal Corporation are meaningfully informative to ADEM's permitting process and how EPA oversees that process.

- B. The requested materials will contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons.

The disclosure of the requested materials will significantly contribute to the public's understanding of water quality issues related to the Rosa coal mine—as opposed to the

Mr. Larry Gottesman
March 15, 2010
Page 2

understanding of the requester or a narrow segment of interested persons—because SELC will communicate the information to its client nonprofit organizations, its supporters, and to the public at large. Information gleaned from the requested records will be shared with other nonprofit entities and will also be disseminated to the public at large as appropriate to further the public-service mission of the SELC, through SELC's website and newsletters, editorials in local newspapers, comments at public meetings, and written comments regarding government actions. SELC is currently in litigation with the State of Alabama regarding the permit issued for this site, and any information obtained from EPA will be used to further inform the public about ADEM's evaluation of water quality impacts in the issuance of NPDES permits. Accordingly, the disclosure will contribute significantly to public understanding of these government operations or activities.

C. The requested material contributes significantly to public understanding of government operations or activities.

The subject matter of the requested records concerns identifiable operations and activities of the government - the evaluation by EPA and ADEM of water quality impacts associated with a controversial coal mine in Alabama. Numerous citizen groups have publicly opposed this proposed mine because of potential water quality impacts, thus making this an environmental issue of public concern. Disclosure of the requested material will contribute significantly to the public's understanding of EPA's evaluation of NPDES permits issued by the state of Alabama and more specifically, EPA's evaluation of the Rosa coal mine permit. The requested records will reveal what information the EPA considered in reviewing this permit, and what information informed the EPA's comments on this permit.

In sum, based on the factors discussed above, in addition to the high level of public interest in the controversial subject matter of the FOIA request, we renew our request for a public interest fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 49 C.F.R. § 7.44(c).

Thank for your time and attention to this matter. Should you have any questions, please feel free to contact me at (404) 521-9900.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine M. Wannamaker", with a long horizontal flourish extending to the right.

Catherine M. Wannamaker
Staff Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 18, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Ms. Catherine Wannamaker
Southern Environmental Law Center
127 Peachtree Street, Suite 605
Atlanta, GA 30303-1800

RE: Request Number 04-FOI-00343-10

Dear Ms. Wannamaker:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request seeking documents that relate to the NPDES permit for Mcoal Corporation's Rosa Coal Mine in Blount County, Alabama.

Responding to your request does not reach the minimum billable amount. Accordingly, there are no charges associated with processing your request. EPA's Region 4 office will be responding your information request.

If you have any questions concerning this please contact me on 202-566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", is written over the word "Sincerely,".

Larry F. Gottesman
National FOIA Officer



FOIA Request No. 4-FOI-00343-10 - Fee Waiver Request

Kindra Callahan to: Cynthia Floyd-Coleman, hq.foia

Cc: Kindra Callahan

03/18/2010 03:01 PM

Cindy: Pursuant to our telephone conversation, the response to this FOIA request is non-billable. Therefore, the fee waiver portion should reflect this. Thanks and have a great day.

Thanks

Kindra Callahan, Regional FOIA Officer

U.S. Environmental Protection Agency

61 Forsyth Street

Atlanta, GA 30303

404/562-8028 (telephone)

404/562-8054 (fax)

callahan.kindra@epa.gov